

MONTANA LEGISLATIVE HISTORY

Chapter 163 1997

Bill H \_\_\_\_\_ S 163 <sup>yes it</sup><sub>true</sub> Original bill & history \_\_\_\_C

H. Committee on Judiciary

Hearing Date(s) 3/11 \_\_\_\_C

3/11 \_\_\_\_C

\_\_\_\_C

\_\_\_\_C

Date Out \_\_\_\_C

S. Committee on Judiciary

Hearing Date(s) 1/22 \_\_\_\_C

1/27 \_\_\_\_C

\_\_\_\_C

\_\_\_\_C

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Did this bill originate in an interim committee? \_\_\_\_Yes \_\_\_\_No

Committee \_\_\_\_\_

Report \_\_\_\_\_

MINUTES

MONTANA SENATE  
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BRUCE D. CRIPPEN, on January 22, 1997, at 10:00 a.m., in the Senate Judiciary Chambers (325) of the State Capitol, Helena, Montana.

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)  
Sen. Lorents Grosfield, Vice Chairman (R)  
Sen. Al Bishop (R)  
Sen. Sue Bartlett (D)  
Sen. Steve Doherty (D)  
Sen. Sharon Estrada (R)  
Sen. Mike Halligan (D)  
Sen. Ric Holden (R)  
Sen. Reiny Jabs (R)

Members Excused: Sen. Walter L. McNutt (R)

Members Absent: None

Staff Present: Valencia Lane, Legislative Services Division  
Jody Bird, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 163, SB 167,  
posted January 10, 1997  
Executive Action: SB 167, SB 31

HEARING ON SB 167

Sponsor: SENATOR VIVIAN BROOKE, SD 33, Missoula.

Proponents: Angela Fultz, Office of the Secretary of State  
John Connor, Department of Justice  
Robert Throssell, Montana Association of Clerks and  
Recorders  
Kathy Sewell, Montana Coalition Against Domestic  
Violence  
Kate Cholewa, Montana Women's Lobby

Opponents: None

Opening Statement by Sponsor: SENATOR VIVIAN BROOKE, SD 33, Missoula. We did put in an exemption for law enforcement officers last session (language on page 1, lines 27-30 of the bill). SB 167 expands this provision to victims of crimes. I will reserve the right to close.

Proponents' Testimony: Angela Fultz, Office of the Secretary of State. I believe this bill will allow such people to participate more fully in voting and the legislative process. The bill lists what is acceptable and what is not for the counties.

John Connor, Department of Justice. The Department supports the bill for the public policy reasons already stated.

Robert Throssell, Montana Association of Clerks and Recorders. The peace office exemption has not been a problem in maintaining voter lists. We ask the Committee to give this bill a do pass recommendation.

Kathy Sewell, Montana Coalition Against Domestic Violence. We support the bill for the reasons previously stated.

Kate Cholewa, Montana Women's Lobby. We support SB 167.

Opponents' Testimony: None

Questions From Committee Members and Responses: SENATOR RIC HOLDEN. If you are registered to vote, is it correct that your name, but not your address, will appear on the voter register? SENATOR BROOKE. Yes.

SENATOR REINY JABS. Who makes the final decision as to whose name and/or address is on the register? SENATOR BROOKE. Several criteria are listed on page, 2, lines 1-12, subsection (6), (i), (ii), (b), (c), which must be met. This is a fairly high standard, requiring actual proof of the situation, after which the election officer is required to remove the address.

SENATOR MIKE HALLIGAN. Is there any federal election on voter files that would pre-empt Montana from implementing this? Angela Fultz. I will double check this and get back to you, but I don't think so.

Closing by Sponsor: SENATOR BROOKE. This also includes victims of domestic assault (page 4), where law enforcement has had to intervene. This is an issue of safety, and is one simple way to afford protection to victims.

#### HEARING ON SB 163

Sponsor: SENATOR CHRIS CHRISTIAENS, SD 23, Great Falls.

Proponents: Judge Nancy Luth, Great Falls.

1 SB BILL NO. 163  
2 INTRODUCED BY Christiane Tass W. Lynn Duvall  
3

4 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING THE USE OF TWO-WAY ELECTRONIC AUDIO-VIDEO  
5 COMMUNICATION FOR ENTERING PLEAS AND SENTENCING IN MISDEMEANOR CRIMINAL CASES IF THE  
6 PROSECUTOR DOES NOT OBJECT; AMENDING SECTIONS 46-12-211, 46-16-105, 46-17-203, 46-18-102,  
7 AND 46-18-115, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY  
8 DATE."  
9

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
11

12 **Section 1.** Section 46-12-211, MCA, is amended to read:

13 **"46-12-211. Plea agreement procedure -- use of two-way electronic audio-video communication.**

14 (1) The prosecutor and the attorney for the defendant, or the defendant when acting pro se, may engage  
15 in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty to a  
16 charged offense or to a lesser or related offense, the prosecutor will do any of the following:

17 (a) move for dismissal of other charges;

18 (b) agree that a specific sentence is the appropriate disposition of the case; or

19 (c) make a recommendation, or agree not to oppose the defendant's request, for a particular  
20 sentence, with the understanding that the recommendation or request may not be binding upon the court.

21 (2) ~~If~~ Subject to the provisions of subsection (5), if a plea agreement has been reached by the  
22 parties, the court shall, on the record, require a disclosure of the agreement in open court or, on a showing  
23 of good cause in camera, at the time that the plea is offered. If the agreement is of the type specified in  
24 subsection (1)(a) or (1)(b), the court may accept or reject the agreement, or may defer its decision as to  
25 the acceptance or rejection until there has been an opportunity to consider the presentence report. If the  
26 agreement is of the type specified in subsection (1)(c), the court shall advise the defendant that, if the court  
27 does not accept the recommendation or request, the defendant nevertheless has no right to withdraw the  
28 plea.

29 (3) If the court accepts a plea agreement, the court shall inform the defendant that it will embody  
30 in the judgment and sentence the disposition provided for in the plea agreement.

(4) If the court rejects a plea agreement of the type specified in subsection (1)(a) or (1)(b), the court shall, on the record, inform the parties of this fact and advise the defendant that the court is not bound by the plea agreement, afford the defendant an opportunity to withdraw the plea, and advise the defendant that if the defendant persists in the guilty plea, the disposition of the case may be less favorable to the defendant than that contemplated by the plea agreement.

(5) For purposes of this section, in cases in which the defendant is charged with a misdemeanor offense, a disclosure of the agreement through the use of two-way electronic audio-video communication, allowing all of the participants to be observed and heard in the courtroom by all present, is considered to be a disclosure in open court. However, audio-video communication may not be used if the prosecutor objects to its use. The audio-video communication must operate as provided in 46-12-201."

**Section 2.** Section 46-16-105, MCA, is amended to read:

**"46-16-105. Plea of guilty -- use of two-way electronic audio-video communication.** (1) Before or during trial, a plea of guilty may be accepted when:

(a) subject to the provisions of subsection (3), the defendant enters a plea of guilty in open court; and

(b) the court has informed the defendant of the consequences of ~~his~~ the plea and of the maximum penalty provided by law ~~which that~~ may be imposed upon acceptance of ~~such~~ the plea.

(2) At any time before or after judgment, the court may, for good cause shown, permit the plea of guilty to be withdrawn and a plea of not guilty substituted.

(3) For purposes of this section, in cases in which the defendant is charged with a misdemeanor offense, an entry of a plea of guilty through the use of two-way electronic audio-video communication, allowing all of the participants to be observed and heard in the courtroom by all present, is considered to be an entry of a plea of guilty in open court. However, audio-video communication may not be used if the prosecutor objects to its use. The audio-video communication must operate as provided in 46-12-201."

**Section 3.** Section 46-17-203, MCA, is amended to read:

**"46-17-203. Plea of guilty -- use of two-way electronic audio-video communication.** (1) Before or during trial, a plea of guilty may be accepted when:

(a) subject to the provisions of subsection (3), the defendant enters a plea of guilty in open court;

1 and

2 (b) the court has informed the defendant of the consequences of ~~his~~ the plea and of the maximum  
3 penalty provided by law ~~which~~ that may be imposed upon acceptance of the plea.

4 (2) A plea of guilty in a ~~justices'~~ justice's court, city court, or other court of limited jurisdiction  
5 waives the right of trial de novo in district court. A defendant must be informed of the waiver before the  
6 plea is accepted, and the justice or judge shall question the defendant to ensure that the plea and waiver  
7 are entered voluntarily.

8 (3) For purposes of this section, in cases in which the defendant is charged with a misdemeanor  
9 offense, an entry of a plea of guilty through the use of two-way electronic audio-video communication,  
10 allowing all of the participants to be observed and heard in the courtroom by all present, is considered to  
11 be an entry of a plea of guilty in open court. However, audio-video communication may not be used if the  
12 prosecutor objects to its use. The audio-video communication must operate as provided in 46-12-201."  
13

14 **Section 4.** Section 46-18-102, MCA, is amended to read:

15 **"46-18-102. Rendering judgment and pronouncing sentence -- use of two-way electronic**  
16 **audio-video communication.** (1) The judgment ~~shall~~ must be rendered in open court. For purposes of this  
17 section, in cases in which the defendant is charged with a misdemeanor offense, a judgment rendered  
18 through the use of two-way electronic audio-video communication, allowing all of the participants to be  
19 observed and heard in the courtroom by all present, is considered to be a judgment rendered in open court.  
20 However, audio-video communication may not be used if the prosecutor objects to its use. The audio-video  
21 communication must operate as provided in 46-12-201.

22 (2) If the verdict or finding is not guilty, judgment ~~shall~~ must be rendered immediately and the  
23 defendant ~~shall~~ must be discharged from custody or from the obligation of ~~his~~ a bail bond.

24 (3) (a) If the verdict or finding is guilty, sentence ~~shall~~ must be pronounced and judgment rendered  
25 within a reasonable time.

26 (b) When the sentence is pronounced, the judge shall clearly state for the record ~~his~~ the reasons  
27 for imposing the sentence."  
28

29 **Section 5.** Section 46-18-115, MCA, is amended to read:

30 **"46-18-115. Sentencing hearing -- use of two-way electronic audio-video communication.** Before

1 imposing sentence or making any other disposition upon acceptance of a plea or upon a verdict or finding  
2 of guilty, the court shall conduct a sentencing hearing, without unreasonable delay, as follows:

3 (1) The court shall afford the parties an opportunity to be heard on any matter relevant to the  
4 disposition, including the applicability of sentencing enhancement provisions, mandatory minimum  
5 sentences, persistent felony offender status, or an exception to these matters.

6 (2) If there is a possibility of imposing the death penalty, the court shall hold a hearing as provided  
7 by 46-18-301.

8 (3) Except as provided in 46-11-701 and 46-16-120 through 46-16-123, the court shall address  
9 the defendant personally to ascertain whether the defendant wishes to make a statement and to present  
10 any information in mitigation of punishment or reason why the defendant should not be sentenced. If the  
11 defendant wishes to make a statement, the court shall afford the defendant a reasonable opportunity to  
12 do so. For purposes of this section, in cases in which the defendant is charged with a misdemeanor  
13 offense, the requirement that the court address the defendant personally may be satisfied by the use of  
14 two-way electronic audio-video communication. However, audio-video communication may not be used  
15 if the prosecutor objects to its use. The audio-video communication must operate as provided in  
16 46-12-201.

17 (4) (a) The court shall permit the victim to present a statement concerning the effects of the crime  
18 on the victim, the circumstances surrounding the crime, the manner in which the crime was perpetrated,  
19 and the victim's opinion regarding appropriate sentence. At the victim's option, the victim may present the  
20 statement in writing before the sentencing hearing or orally under oath at the sentencing hearing, or both.

21 (b) The court shall give copies of any written statements of the victim to the prosecutor and the  
22 defendant prior to imposing sentence.

23 (c) The court shall consider the victim's statement along with other factors. However, if the  
24 victim's statement includes new material facts upon which the court intends to rely, the court shall allow  
25 the defendant adequate opportunity to respond and may continue the sentencing hearing if necessary.

26 (5) The court shall impose sentence or make any other disposition authorized by law.

27 (6) In felony cases, the court shall specifically state all reasons for the sentence, including  
28 restrictions, conditions, or enhancements imposed, in open court on the record and in the written  
29 judgment."  
30

1        **NEW SECTION.** **Section 6. Applicability.** [This act] applies to guilty pleas entered and sentences  
2 pronounced after [the effective date of this act].  
3

4        **NEW SECTION.** **Section 7. Effective date.** [This act] is effective on passage and approval.  
5

-END-



STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0163, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act allowing the use of two-way electronic audio-video communication for entering pleas and sentencing in misdemeanor criminal cases if the prosecutor does not object.

FISCAL IMPACT:

There is no fiscal impact to the state.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

To implement this legislation, counties may have to purchase audio-video equipment. Information is not available to quantify this potential cost.

*Dave Lewis* 1-15-97

DAVE LEWIS, BUDGET DIRECTOR DATE  
Office of Budget and Program Planning

*Chris Christiaens* 1/16/97

CHRIS CHRISTIAENS, PRIMARY SPONSOR DATE

Fiscal Note for SB0163, as introduced

SB 163

Joshua Saunders, Amy Krogstad, Laura Martin, Nathan Matelich, Joslin Swartz, John Semmens, Blessed Trinity Catholic School, Great Falls  
Bob Gilbert, Montana Magistrates Association

Opponents: Scott Crichton, Executive Director, American Civil Liberties Union (ACLU)

Opening Statement by Sponsor: SENATOR CHRIS CHRISTIAENS, SD 23, Great Falls. I have worked with fifth and eighth grade classes from Blessed Trinity School and Great Falls City Court Judge, Nancy Luth, who uses this in her court. The bill may need a couple of amendments. In Section 4, line 18, following "community", we may need to insert "at the discretion of the Court" This might clear it up. In 46-12-201, MCA, we could add "for entering pleas and sentencing". Some Counties might need to purchase audio/visual equipment for this purpose.

Proponents' Testimony: Judge Nancy Luth, Great Falls. We have several people brought from the jail to hear cases, and we usually pronounce sentence right after taking the plea. If we go to an audio/visual arraignment, the system could eliminate the step of bringing the defendant from the jail to Court - thus reducing four steps to three.

Joshua Saunders, Blessed Trinity Catholic School, Great Falls. Joshua read from prepared testimony (EXHIBIT #1) A law passed two years ago, allows audio/visual equipment in court. The bill amends Title 46, MCA. Captain Redmond, of the Great Falls Police told us that when officers are tied up in court there are fewer of them on the streets to protect the public.

Amy Krogstad, Blessed Trinity Catholic School, Great Falls. SB 163 makes it non-mandatory to appear in court in misdemeanor situations. The bill would help the safety of the judge, police officers, and prisoners by averting the need to transport prisoners to court. This would save time and money for the Courts, and wouldn't cost the state, but rather the Counties.

{Tape: 1; Side: A; Approx. Time Count: 10:27 a.m.; Comments: None.}

Laura Martin, Blessed Trinity Catholic School, Great Falls. There are safety issues for police, prisoners, and judges. Judge Luth was attacked with a sewing needle.

Nathan Matelich, Blessed Trinity Catholic School, Great Falls. Some of my reasons for supporting this bill are the same as those of Joshua Saunders. Some legislators may want to see prisoners in the Courtroom because of the argument that lawyers will lose money if this bill passes; however, prisoners still have the right to legal representation.

Exhibit missing  
not on CD

**Joslin Swartz, Blessed Trinity Catholic School, Great Falls.** SB 163 will prevent contraband from being given to prisoners by family when they are brought to court. Right now, we must pay police to babysit prisoners at the Courthouse. SB 163 is a good bill to eliminate these problems.

**John Semmens, Blessed Trinity Catholic School, Great Falls.** In the past weeks we have been working with Judge Luth, Senator Chris Christiaens, and local law enforcement to draft this bill.

**CHAIRMAN CRIPPEN** complimented the students and the school on the presentation of their testimony.

**Bob Gilbert, Montana Magistrates Association.** We support the bill with the proposed amendment adding, "to include entering plea and sentencing. The magistrates are concerned that the smaller courts in rural Montana would have to purchase audio/visual equipment that they cannot afford. The county attorneys support this bill with the above clarification.

**Opponents' Testimony: Scott Crichton, Executive Director, ACLU.** This concept is called telejustice. This might also be a diminution of the judicial system with regard to due process, i.e., the right to face one's accuser and having the judge look you in the eyes.

If the provisions in SB 163 are introduced and allowed, there will be substantial expansions in the future. When someone is sentenced, that results in deprivation of liberty. We need to keep this in mind, as it is inevitable that expansion will come, although it is a slippery slope when we take the process out of the people's hands. There is no provision for the defendant to say whether this is acceptable to him or her or not.

With all due respect, I ask the Committee to weigh the pluses and minuses in making this decision.

*{Tape: 1; Side: A; Approx. Time Count: #34.9, 10:40 a.m.;  
Comments: None.}*

**Informational Testimony: John Connor, Montana County Attorneys Association.** The language concerning the prosecutor objecting was put into the bill because we ought to have the right to confront the defendant. It is not the intent of the bill to infringe upon the rights of defendants in any way. We would amend the bill to state "with the consent of the parties".

**Questions From Committee Members and Responses: SENATOR SHARON ESTRADA.** Have you spoken with the larger counties regarding the cost of equipment? **SENATOR CHRISTIAENS.** The largest counties already have this in place. Because this is discretionary, the smaller counties might not opt to use it.

**SENATOR ESTRADA.** Are you talking about VCR cameras? **Judge Luth.** They would also need live hook-ups, live communications. This is a very sophisticated system, and according to Judge Stewart in Billings, that equipment is in place.

**VICE CHAIRMAN LORENTS GROSFIELD.** I understand about having someone look them in the eye. In 10, MCA, is says audio/visual equipment must operate so that the defendant and the judge can see/hear each other simultaneously. So, I wonder why this is not sufficient? **Scott Chrichton.** Sometimes we learn more from being in the presence of a person versus a two-dimensional picture. When Ted Schwinden was Governor, he went to Montana State Prison and sat face-to-face with a prisoner, and then decided to commute the death sentence to a life sentence.

**VICE CHAIRMAN GROSFIELD.** That was a capital felony case. I believe the Legislature will probably get to the point of being able to hold statewide hearings in this manner.

**SENATOR STEVE DOHERTY.** If the language is changed to "at the option of the parties", would that preclude the purpose of the bill? **SENATOR CHRISTIAENS.** No.

**SENATOR RIC HOLDEN.** Have you drafted the amendments in the proper form? **Bob Gilbert.** No, but it wouldn't, take long. Another bill is being rewritten similarly now, and I would like to see the same for this bill.

{Tape: 1; Side: B; Approx. Time Count: 00, 10:45 a.m.; Comments: None.}

**SENATOR MIKE HALLIGAN.** Have you read any judicial literature on the impact of video sentencing? **Judge Luth.** I take Mr. Chrichton's concerns very seriously myself. A few in my court are confused, and I would want them to appear personally. In other cases where the defendants understand the system, audio/visual would be appropriate.

**CHAIRMAN CRIPPEN.** If this bill is amended to include "at the discretion of the parties", would you still object to the bill? **Scott Chrichton.** It would be a giant step toward a better bill. I would still be back when this is expanded later on. We're not opposed to technology, but we want to retain the core values associated with the rights of defendants, at the discretion of the Courts.

{Tape: 1; Side: B; Approx. Time Count: 10:55 a.m.; Comments: None.}

**CHAIRMAN CRIPPEN.** You heard the testimony. Put yourself in the defendant's place. Are you willing to waive your right to appear. **Amy Krogstad.** Yes, I am. I don't believe a camera or face-to-face would make a difference to me, but I would like the opportunity to make the decision.

**SENATOR ESTRADA.** Is being before a camera saying to the defendant, "this isn't too bad"? Might it lessen their fear of recommitting a crime? **John Semmens.** I believe the jail experience would already be scary enough.

**SENATOR ESTRADA.** I am absolutely impressed with the testimony and decorum of these children.

**Closing by Sponsor: SENATOR CHRISTIAENS.** This has been a good hearing. Remember, it is permissive, and the safety mechanisms are in place. I believe this is a good bill, as do the students who've had mock hearings in class and have involved in local, state, and federal law enforcement in their learning process.

#### EXECUTIVE ACTION ON SB 31

**Amendments: CHAIRMAN BRUCE CRIPPEN.** The JENKINS amendment would strike "shall" and insert "may" on page 1, line 15 (sb003102.avl). The Judge could order surgical or chemical castration. It would deal with the entire Section 502, and would give the defendant the right to voluntary submission. If the Judge doesn't order him to surgical treatment, it doesn't address chemical castration. (Department of Corrections amendments - sb003101.avl).

**Motion/Vote: SENATOR SHARON ESTRADA MADE A MOTION TO ADOPT SENATOR JENKINS' AMENDMENTS (sb003102.avl). THE MOTION CARRIED UNANIMOUSLY.**

**Discussion: VICE CHAIRMAN LORENTS GROSFIELD.** I want it in the record that this bill deals with chemical treatment, and not chemical castration, but rather surgical castration. Chemical treatment is not foolproof. It is only effective in some people, and only as long as it is taken.

**Motion: VICE CHAIRMAN GROSFIELD MADE A MOTION TO ADOPT THE DEPARTMENT OF CORRECTIONS AMENDMENTS (sb003101.avl).**

**Discussion: VICE CHAIRMAN GROSFIELD.** A couple of offenders said they want to do this. If that's what they want to do, I don't have a problem with treatment for them, but the offender must approve of the treatment.

**Valencia Lane.** The Department of Corrections amendment change the entire subsection, and totally negate **SENATOR JENKINS'** amendment. They make it discretionary, instead of mandatory, but there is no judicial discretion in the amendment.

**CHAIRMAN CRIPPEN.** **SENATOR JENKINS** has seen these amendments, and doesn't approve of them, but the decision is up to this committee.

{Tape: 1; Side: B; Approx. Time Count: #26.9, 11:16 a.m.;  
Comments: None.}

EXECUTIVE ACTION ON SB 163

Amendments: SENATOR DOHERTY. Amendment 16301.avl addresses the question of why to give the discretion to object just to the prosecution. Why not give it to both sides? John Connor of the County Prosecutor's Office indicate it would be acceptable to amend the bill so either party can object.

Motion/Vote: SENATOR DOHERTY MADE A MOTION TO ADOPT THE AMENDMENTS sb016301.avl. THE MOTION CARRIED UNANIMOUSLY.

Motion/Vote: SENATOR DOHERTY MADE A MOTION THAT SB 163 DO PASS AS AMENDED. THE MOTION CARRIED UNANIMOUSLY.

CHAIRMAN CRIPPEN Would this committee object to having this meeting go into the lunch hour?

{Tape: 2; Side: A; Approx. Time Count: #40; Comments: 11:52 a.m.}

EXECUTIVE ACTION ON SB 176

Discussion: VICE CHAIRMAN GROSFIELD. I am uncomfortable with the way this bill is worded, but feel this may need to be addressed. I would like to put the stricken language back in, and then try to deal with the concept of substantial hardship. CHAIRMAN CRIPPEN asked that the amendments be prepared for tomorrow's meeting at 10:00 a.m.

Informational Testimony:

GREG PETESCH, Code Commission

{Tape: 1; Side: A; Approx. Time Count: 20.1}

Questions From Committee Members and Responses:

{Tape: 1; Side: A; Approx. Time Count: 21.2 - 24.2}

Closing by Sponsor: SEN. BARTLETT

{Tape: 1; Side: A; Approx. Time Count: 25.3}

EXECUTIVE ACTION ON SB 160Motion: REP. WYATT moved SB 160 BE CONCURRED IN.

{Tape: 1; Side: A; Approx. Time Count: 25.8}

Motion/Vote: REP. ANDERSON moved the amendments. The motion carried 17 - 0.

{Tape: 1; Side: A; Approx. Time Count: 26.0; Comments: See Exhibit 3 for amendments.}

Motion/Vote: REP. BOHARSKI moved SB 160 BE CONCURRED IN AS AMENDED. The motion carried 17 - 0. REP. SANDS will carry SB 160.EXECUTIVE ACTION ON SB 31Motion: REP. BOHARSKI moved SB 31 BE CONCURRED IN.

{Tape: 1; Side: A; Approx. Time Count: 28.2}

Discussion:

{Tape: 1; Side: A; Approx. Time Count: 29.0}

Vote: The motion carried 17 - 0. REP. KOTTEL will carry SB 31.HEARING ON SB 163Opening Statement by Sponsor: SEN. CHRIS CHRISTIAENS

{Tape: 1; Side: A; Approx. Time Count: 31.0}

Proponents' Testimony:

BOB GILBERT, Montana Magistrates' Association

{Tape: 1; Side: A; Approx. Time Count: 34.6}

JOHN CONNOR, Department of Justice

{Tape: 1; Side: A; Approx. Time Count: 35.0}

JIM KEMBEL, City of Billings

{Tape: 1; Side: A; Approx. Time Count: 37.3}

MIKE MATHEW, Yellowstone County

{Tape: 1; Side: A; Approx. Time Count: 37.5}

Questions From Committee Members and Responses:

{Tape: 1; Side: A; Approx. Time Count: 38.8}

Closing by Sponsor: SEN. CHRISTIAENS

{Tape: 1; Side: B; Approx. Time Count: 0.6}

EXECUTIVE ACTION ON SB 163

Motion: REP. WYATT moved SB 163 BE CONCURRED IN.

{Tape: 1; Side: B; Approx. Time Count: 1.9}

Discussion:

{Tape: 1; Side: B; Approx. Time Count: 2.0}

Vote: The motion carried 16 - 0. REP. TUSS will carry SB 163.

EXECUTIVE ACTION ON HB 122

Discussion:

{Tape: 1; Side: B; Approx. Time Count: 5.0; Comments: The committee decided to appeal to the rules committee for a ruling on pending action on HB 122.}

Motion/Vote: REP. ANDERSON moved to adjourn. The motion carried by unanimous voice vote.



## SENATE BILL NO. 163

INTRODUCED BY CHRISTIAENS, TUSS, RYAN, DOWELL

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING THE USE OF TWO-WAY ELECTRONIC AUDIO-VIDEO COMMUNICATION FOR ENTERING PLEAS AND SENTENCING IN MISDEMEANOR CRIMINAL CASES IF ~~THE PROSECUTOR DOES NOT OBJECT~~ NEITHER PARTY OBJECTS AND THE COURT AGREES; AMENDING SECTIONS 46-12-211, 46-16-105, 46-17-203, 46-18-102, AND 46-18-115, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 46-12-211, MCA, is amended to read:

**"46-12-211. Plea agreement procedure -- use of two-way electronic audio-video communication.**

(1) The prosecutor and the attorney for the defendant, or the defendant when acting pro se, may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty to a charged offense or to a lesser or related offense, the prosecutor will do any of the following:

(a) move for dismissal of other charges;

(b) agree that a specific sentence is the appropriate disposition of the case; or

(c) make a recommendation, or agree not to oppose the defendant's request, for a particular sentence, with the understanding that the recommendation or request may not be binding upon the court.

(2) ~~If~~ Subject to the provisions of subsection (5), if a plea agreement has been reached by the parties, the court shall, on the record, require a disclosure of the agreement in open court or, on a showing of good cause in camera, at the time that the plea is offered. If the agreement is of the type specified in subsection (1)(a) or (1)(b), the court may accept or reject the agreement, or may defer its decision as to the acceptance or rejection until there has been an opportunity to consider the presentence report. If the agreement is of the type specified in subsection (1)(c), the court shall advise the defendant that, if the court does not accept the recommendation or request, the defendant nevertheless has no right to withdraw the plea.

(3) If the court accepts a plea agreement, the court shall inform the defendant that it will embody in the judgment and sentence the disposition provided for in the plea agreement.

REFERENCE BILL

SB 163

(4) If the court rejects a plea agreement of the type specified in subsection (1)(a) or (1)(b), the court shall, on the record, inform the parties of this fact and advise the defendant that the court is not bound by the plea agreement, afford the defendant an opportunity to withdraw the plea, and advise the defendant that if the defendant persists in the guilty plea, the disposition of the case may be less favorable to the defendant than that contemplated by the plea agreement.

(5) For purposes of this section, in cases in which the defendant is charged with a misdemeanor offense, a disclosure of the agreement through the use of two-way electronic audio-video communication, allowing all of the participants to be observed and heard in the courtroom by all present, is considered to be a disclosure in open court. However, audio-video AUDIO-VIDEO communication may not be used if the prosecutor NEITHER PARTY objects AND THE COURT AGREES to its use. The audio-video communication must operate as provided in 46-12-201."

**Section 2.** Section 46-16-105, MCA, is amended to read:

**"46-16-105. Plea of guilty -- use of two-way electronic audio-video communication.** (1) Before or during trial, a plea of guilty may be accepted when:

(a) subject to the provisions of subsection (3), the defendant enters a plea of guilty in open court; and

(b) the court has informed the defendant of the consequences of ~~his~~ the plea and of the maximum penalty provided by law ~~which that~~ may be imposed upon acceptance of ~~such~~ the plea.

(2) At any time before or after judgment, the court may, for good cause shown, permit the plea of guilty to be withdrawn and a plea of not guilty substituted.

(3) For purposes of this section, in cases in which the defendant is charged with a misdemeanor offense, an entry of a plea of guilty through the use of two-way electronic audio-video communication, allowing all of the participants to be observed and heard in the courtroom by all present, is considered to be an entry of a plea of guilty in open court. However, audio-video AUDIO-VIDEO communication may not be used if the prosecutor NEITHER PARTY objects AND THE COURT AGREES to its use. The audio-video communication must operate as provided in 46-12-201."

**Section 3.** Section 46-17-203, MCA, is amended to read:

**"46-17-203. Plea of guilty -- use of two-way electronic audio-video communication.** (1) Before

1 or during trial, a plea of guilty may be accepted when:

2 (a) subject to the provisions of subsection (3), the defendant enters a plea of guilty in open court;  
3 and

4 (b) the court has informed the defendant of the consequences of ~~his~~ the plea and of the maximum  
5 penalty provided by law ~~which~~ that may be imposed upon acceptance of the plea.

6 (2) A plea of guilty in a ~~justice's~~ justice's court, city court, or other court of limited jurisdiction  
7 waives the right of trial de novo in district court. A defendant must be informed of the waiver before the  
8 plea is accepted, and the justice or judge shall question the defendant to ensure that the plea and waiver  
9 are entered voluntarily.

10 (3) For purposes of this section, in cases in which the defendant is charged with a misdemeanor  
11 offense, an entry of a plea of guilty through the use of two-way electronic audio-video communication,  
12 allowing all of the participants to be observed and heard in the courtroom by all present, is considered to  
13 be an entry of a plea of guilty in open court. However, audio-video AUDIO-VIDEO communication may not  
14 be used if the prosecutor NEITHER PARTY objects AND THE COURT AGREES to its use. The audio-video  
15 communication must operate as provided in 46-12-201."

16  
17 Section 4. Section 46-18-102, MCA, is amended to read:

18 "46-18-102. Rendering judgment and pronouncing sentence -- use of two-way electronic  
19 audio-video communication. (1) The judgment ~~shall~~ must be rendered in open court. For purposes of this  
20 section, in cases in which the defendant is charged with a misdemeanor offense, a judgment rendered  
21 through the use of two-way electronic audio-video communication, allowing all of the participants to be  
22 observed and heard in the courtroom by all present, is considered to be a judgment rendered in open court.  
23 However, audio-video AUDIO-VIDEO communication may not be used if the prosecutor NEITHER PARTY  
24 objects AND THE COURT AGREES to its use. The audio-video communication must operate as provided  
25 in 46-12-201.

26 (2) If the verdict or finding is not guilty, judgment ~~shall~~ must be rendered immediately and the  
27 defendant ~~shall~~ must be discharged from custody or from the obligation of ~~his~~ a bail bond.

28 (3) (a) If the verdict or finding is guilty, sentence ~~shall~~ must be pronounced and judgment rendered  
29 within a reasonable time.

30 (b) When the sentence is pronounced, the judge shall clearly state for the record ~~his~~ the reasons

1 for imposing the sentence."

2  
3 Section 5. Section 46-18-115, MCA, is amended to read:

4 "46-18-115. Sentencing hearing -- use of two-way electronic audio-video communication. Before  
5 imposing sentence or making any other disposition upon acceptance of a plea or upon a verdict or finding  
6 of guilty, the court shall conduct a sentencing hearing, without unreasonable delay, as follows:

7 (1) The court shall afford the parties an opportunity to be heard on any matter relevant to the  
8 disposition, including the applicability of sentencing enhancement provisions, mandatory minimum  
9 sentences, persistent felony offender status, or an exception to these matters.

10 (2) If there is a possibility of imposing the death penalty, the court shall hold a hearing as provided  
11 by 46-18-301.

12 (3) Except as provided in 46-11-701 and 46-16-120 through 46-16-123, the court shall address  
13 the defendant personally to ascertain whether the defendant wishes to make a statement and to present  
14 any information in mitigation of punishment or reason why the defendant should not be sentenced. If the  
15 defendant wishes to make a statement, the court shall afford the defendant a reasonable opportunity to  
16 do so. For purposes of this section, in cases in which the defendant is charged with a misdemeanor  
17 offense, the requirement that the court address the defendant personally may be satisfied by the use of  
18 two-way electronic audio-video communication. However, audio-video AUDIO-VIDEO communication may  
19 not be used if the prosecutor NEITHER PARTY objects AND THE COURT AGREES to its use. The  
20 audio-video communication must operate as provided in 46-12-201.

21 (4) (a) The court shall permit the victim to present a statement concerning the effects of the crime  
22 on the victim, the circumstances surrounding the crime, the manner in which the crime was perpetrated,  
23 and the victim's opinion regarding appropriate sentence. At the victim's option, the victim may present the  
24 statement in writing before the sentencing hearing or orally under oath at the sentencing hearing, or both.

25 (b) The court shall give copies of any written statements of the victim to the prosecutor and the  
26 defendant prior to imposing sentence.

27 (c) The court shall consider the victim's statement along with other factors. However, if the  
28 victim's statement includes new material facts upon which the court intends to rely, the court shall allow  
29 the defendant adequate opportunity to respond and may continue the sentencing hearing if necessary.

30 (5) The court shall impose sentence or make any other disposition authorized by law.

1 (6) In felony cases, the court shall specifically state all reasons for the sentence, including  
2 restrictions, conditions, or enhancements imposed, in open court on the record and in the written  
3 judgment."

4  
5 NEW SECTION. **Section 6. Applicability.** [This act] applies to guilty pleas entered and sentences  
6 pronounced after [the effective date of this act].

7  
8 NEW SECTION. **Section 7. Effective date.** [This act] is effective on passage and approval.

9 -END-